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7 HILDA MATOS,  
8 Plaintiff,  
9 v.  
10 ANDREW M. SAUL,  
11 Defendant.

Case No. [19-cv-02505-TSH](#)

**ORDER GRANTING MOTION FOR  
ATTORNEY'S FEES**

Re: Dkt. No. 19

12  
13 **I. INTRODUCTION**

14 Plaintiff's counsel, Katherine Siegfried, moves for attorney's fees pursuant to the Equal  
15 Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), for representing Plaintiff in her successful  
16 appeal of the Commissioner's denial of social security disability benefits. ECF No. 19. The  
17 Commissioner filed an opposition (ECF. No. 20) and Plaintiff filed a reply (ECF No. 21). Having  
18 considered the parties' positions, relevant legal authority, and the record in this case, the Court  
19 **GRANTS** the motion for the reasons set forth below.

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21 **II. BACKGROUND**

22 On March 7, 2016, Plaintiff filed a claim for Disability Insurance Benefits for a  
23 combination of mental and physical impairments, including depression and fibromyalgia. After  
24 the administration denied her application and she exhausted her administrative remedies, Plaintiff  
25 commenced this action for judicial review pursuant to 42 U.S.C. § 405(g). On March 23, 2020,  
26 the Court granted Plaintiff's motion for summary judgment and remanded for further proceedings.  
27 ECF No. 16. The Court found the Administrative Law Judge ("ALJ") did not commit reversible  
28 error as to Plaintiff's mental impairments, but he erred in not assessing Plaintiff's fibromyalgia as  
a medically determinable impairment at step two of the sequential process, and by failing to

1 appropriately analyze the impairments and limitations caused by fibromyalgia at subsequent steps.  
2 Because remand was warranted by that error alone, the Court did not consider Plaintiff's  
3 remaining arguments but instructed the Agency to take them into account as part of its  
4 reconsideration.

5 Plaintiff now moves for attorney's fees totaling \$10,057.25 (49 hours at a rate of \$205.25  
6 per hour), as well as reimbursement for the cost of the \$400 filing fee. She seeks an additional  
7 \$923.63 for time spent preparing the reply brief.

### 8 III. LEGAL STANDARD

9 The purpose of the EAJA statute is to "eliminate financial disincentives for those who  
10 would defend against unjustified government action and thereby to deter the unreasonable exercise  
11 of government authority." *Gutierrez v. Barnhart*, 274 F.3d 1255, 1262 (9th Cir. 2001) (quoting  
12 *Ardestani v. INS*, 502 U.S. 129, 138 (1991)). To prevail in a motion for EAJA fees, the plaintiff  
13 must be a prevailing party and the government's position must be without substantial justification.  
14 *Hensley v. Eckerhart*, 461 US 424, 433 (1983).

### 15 IV. DISCUSSION

16 Plaintiff argues the Commissioner's position was not substantially justified because the  
17 ALJ failed to conduct the required analysis under the Agency's own policies, and it was therefore  
18 clear that the Agency was not substantially justified in defending against this action. Mot. at 4.  
19 The Commissioner argues Plaintiff is not entitled to attorney's fees because there was substantial  
20 justification for the government's position. Opp'n at 3. Specifically, the Commissioner notes  
21 that, although the Court found remand appropriate on one issue, it found the ALJ did not err in his  
22 finding regarding Plaintiff's mental impairments and it did not consider her remaining arguments  
23 as to whether the ALJ provided legally sufficient reasons for discounting her testimony and  
24 whether the ALJ properly addressed medical source statements. *Id.* Alternatively, the  
25 Commissioner argues the fees requested are unreasonable because routine social security cases are  
26 typically litigated in 15 to 30 hours and there were no unusual facts or circumstances in this case  
27 justifying a higher award. *Id.* at 6. If the Court awards fees, the Commissioner requests the  
28 number of hours be reduced to 23. *Id.* at 7.

1       **A. Prevailing Party**

2           An applicant for Social Security benefits who receives a remand under sentence four of 42  
3 U.S.C. § 405(g) is a “prevailing party” and eligible for fees and costs under the EAJA. *Shalala v.*  
4 *Schaefer*, 509 U.S. 292, 302 (1993). Plaintiff is therefore a prevailing party.

5       **B. Substantial Justification**

6           The EAJA mandates an award of attorney fees to the prevailing party “unless the court  
7 finds the position of the United States was substantially justified or that special circumstances  
8 make an award unjust.” 28 USC § 2412(d)(1)(A); *Thomas v. Peterson*, 841 F.2d 332, 335 (9th  
9 Cir. 1998). The Commissioner bears the burden of establishing that his position was  
10 “substantially justified.” *Gutierrez*, 274 F.3d at 1258. To meet this standard, the Commissioner  
11 must show the government’s position was “justified in substance or in the main – that is, justified  
12 to a degree that could satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565  
13 (1988) (internal quotation marks omitted). “Put differently, the government’s position must have  
14 a reasonable basis both in law and fact.” *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013).

15           Under the EAJA, both the “government’s litigation position and the underlying agency  
16 action giving rise to the civil action” must be substantially justified in order to avoid an award of  
17 fees. *Id.* Thus, “[t]he government’s position must be substantially justified at each stage of the  
18 proceedings.” *Id.* at 872 (quoting *Corbin v. Apfel*, 149 F.3d 1051, 1052 (9th Cir. 1998)) (internal  
19 quotation marks omitted); *Jaureque v. Colvin*, 2013 WL 5645310, at \*1 (N.D. Cal. Oct. 16, 2013)  
20 (“The court must examine whether the government was substantially justified in its original act  
21 and its decision to defend it in court.”) (citing *Kali v. Bowen*, 854 F.2d 329, 332 (9th Cir. 1988)).  
22 In this circuit, “a holding that the agency’s decision was unsupported by substantial evidence is a  
23 strong indication that the position of the United States was not substantially justified.” *Meier*, 727  
24 F.3d at 872 (internal quotations and modifications omitted); *see also Thangaraja v. Gonzales*, 428  
25 F.3d 870, 874 (9th Cir. 2005) (“[I]t will be only a decidedly unusual case in which there is  
26 substantial justification under the EAJA even though the agency’s decision was reversed as  
27 lacking in reasonable, substantial and probative evidence in the record”).

28           Here, the Court found that the ALJ’s decision was afflicted with significant errors,

1 including the ALJ's failure to evaluate whether Plaintiff's fibromyalgia was a medically  
2 determinable impairment under the guidelines established in Social Security Ruling 12-2p, and  
3 how that determination affected subsequent steps in the sequential analysis. Order at 20-22, ECF  
4 No. 16. Despite this, the Commissioner argues that he was substantially justified in defending the  
5 ALJ's decision because the ALJ raised the issue of fibromyalgia at the hearing. Opp'n at 4.  
6 However, the Court is aware of no precedent establishing that, because there was a discussion at  
7 the hearing, it should not matter that the decision itself failed to address the correct legal standard  
8 for analyzing cases of fibromyalgia. In light of these flaws in the ALJ's ruling, the  
9 Commissioner's defense of that decision was not substantially justified. *See Xie v. Colvin*, 2016  
10 WL 1427494, at \*1 (N.D. Cal. Apr. 12, 2016) (finding the government was not substantially  
11 justified in its decision to defend the ALJ's decision based on errors committed at the second step  
12 in the analysis).

13 **C. Reasonableness of Attorney's Fees**

14 Under the EAJA, Plaintiff is entitled to "reasonable" fees. 28 U.S.C. § 2412(d)(2)(A).  
15 Determining whether the expenditure of time litigating a Social Security case was reasonable "will  
16 always depend on case-specific factors including, among others, the complexity of the legal issues,  
17 the procedural history, the size of the record, and when counsel was retained"; courts cannot apply  
18 de facto caps limiting the hours attorneys can reasonably expend. *Costa v. Comm'r of Soc. Sec.*  
19 *Admin.*, 690 F.3d 1132, 1136, 1137 (9th Cir. 2012). The fee applicant bears the burden of proving  
20 they are reasonable. 28 U.S.C. § 2412(d)(2)(A); *Hensley*, 461 U.S. at 437 ("[T]he fee applicant  
21 bears the burden of establishing entitlement to an award and documenting the appropriate hours  
22 expended and hourly rates.").

23 "When the district court makes its award, it must explain how it came up with the  
24 amount." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). "Where the  
25 difference between the lawyer's request and the court's award is relatively small, a somewhat  
26 cursory explanation will suffice. But where the disparity is larger, a more specific articulation of  
27 the court's reasoning is expected." *Id.*; *see also Costa*, 690 F.3d at 1136 (citing *Moreno* and  
28 noting that a district court can impose a reduction of up to 10 percent based purely on the exercise

1 of its discretion and without more specific explanation, but where the number of hours is reduced  
2 by twenty to twenty-five percent, a court is required to provide more specific explanation).

3       1. Reasonable Fee

4 Plaintiff seeks an hourly rate of \$205.25, which the Commissioner does not oppose. Under  
5 the EAJA, attorney's fees are set at a market rate capped at \$125 per hour. 28 U.S.C. §  
6 2412(d)(2)(A). However, fees in excess of \$125 per hour may be awarded if "the court determines  
7 that an increase in the cost of living . . . justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii); *see*  
8 *also Thangaraja*, 428 F.3d at 876 (awarding fees at rate based on cost of living increases). It is  
9 undisputed that the EAJA statutory maximum hourly rate in the Ninth Circuit, adjusted for  
10 increases in the cost of living, was \$205.25 for 2019 and 2020.<sup>1</sup> As such, the Court finds this rate  
11 reasonable.

12       2. Reasonable Hours

13 The Commissioner's challenge to Plaintiff's fee request focuses on the number of hours  
14 expended in this case. First, he argues Plaintiff raised four issues but prevailed on only one.  
15 Opp'n at 6. However, although the Court did not rule on the merits of two of Plaintiff's  
16 arguments, it instructed the Agency to take them into account as part of its reconsideration on  
17 remand. It is possible that the ALJ will view the issues differently on remand and resolve them in  
18 her favor. For this reason, courts have resisted making downward adjustments to account for the  
19 fact that the case was remanded based on fewer than all of the claims asserted. *See Martinez v.*  
20 *Colvin*, 2017 WL 766665, at \*8 (S.D. Cal. Feb. 27, 2017) (awarding full award of fees, despite  
21 plaintiff not prevailing on all issues, because ALJ's decision could be different on remand);  
22 *Hampton v. Colvin*, 2015 WL 1884313, at \*5 (N.D. Cal. Apr. 23, 2015) (finding arguments in  
23 Social Security appeals are all related to a single claim for relief: "Given that Plaintiff achieved the  
24 relief he sought, he obtained an excellent result, and the fee award should not be reduced because  
25 Plaintiff did not succeed on all the contentions raised."); *Lauser v. Colvin*, 2015 WL 1884330, at  
26 \*4 (N.D. Cal. Apr. 23, 2015) (same); *Trefcer v. Colvin*, 2013 WL 6623823, at \*4-5 (E.D. Cal.

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28 <sup>1</sup> See table set forth at: [http://www.ca9.uscourts.gov/content/view.php?pk\\_id=0000000039](http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039) (citing  
28 U.S.C. § 2412(d)(2)(A)).

1 Dec. 16, 2013) (“Social Security appeals are akin to a single claim for relief based on one set of  
2 facts and involving related legal theories”); *Williams v. Astrue*, 2012 WL 3527224, at \*3-4 (D. Or.  
3 June 26, 2012) (awarding fees where plaintiff presented multiple arguments, not all of which were  
4 successful, but were all in support of one claim for relief: a claim for disability benefits through  
5 reversal and remand), *report and recommendation adopted*, 2012 WL 3527207 (D. Or. Aug. 15,  
6 2012). Because Plaintiff’s claim for relief involved a common core of facts and was based on  
7 related legal theories, “[m]uch of counsel’s time will be devoted generally to the litigation as a  
8 whole . . . . Such a lawsuit cannot be viewed as a series of discrete claims.” *Sorenson v. Mink*,  
9 239 F.3d 1140, 1147 (9th Cir. 2001) (quoting *Hensley*, 461 U.S. at 435). Accordingly, the Court  
10 finds that the results Plaintiff achieved here were sufficiently substantial so as to justify a full  
11 award of fees.

12 The Commissioner also argues Plaintiff’s request is excessive because “routine social  
13 security cases are typically and reasonably litigated in 15 to 30 hours, not 49 hours.” Opp’n at 6-  
14 7. He argues Plaintiff’s award should be reduced by more than half to 23 hours. *Id.* at 7.  
15 However, Plaintiff’s current attorney did not represent her at the administrative hearing and first  
16 became familiar with the record while preparing to file her motion for summary judgment. The  
17 Court has reviewed the Commissioner’s criticisms of Plaintiff’s attorney’s briefing, but it is  
18 unpersuaded that the hours expended by her attorney in litigating this action were an unreasonable  
19 expenditure of time in light of the circumstances of the case. *See Snyder v. Berryhill*, 2019 WL  
20 539076, at \*2 (N.D. Cal. Feb. 11, 2019) (finding 43.2 hours reasonable where plaintiff’s counsel  
21 did not represent him at the administrative level); *Long v. Colvin*, 2015 WL 3902160, at \*3 (N.D.  
22 Cal. June 24, 2015) (finding 58.25 hours reasonable, despite the government’s argument they were  
23 excessive, where plaintiff obtained remand on some but not all of her arguments); *White v. Colvin*,  
24 2015 WL 7429392, at \*3 (N.D. Cal. Nov. 23, 2015) (48.44 hours of attorney’s fees was not  
25 excessive or unreasonable). Further, Ninth Circuit precedent establishes that it is “an abuse of  
26 discretion to apply a de facto policy limiting social security claimants to twenty to forty hours of  
27 attorney time in ‘routine’ cases.” *Costa*, 690 F.3d at 1136. Instead, “[c]ourts should generally  
28 defer to the ‘winning lawyer’s professional judgment as to how much time he was required to

1 spend on the case.”” *Id.* (quoting *Moreno*, 534 F.3d at 1112). Finally, the Court notes the  
2 Commissioner does not specify a single task that did not justify the hours spent on it.  
3 Accordingly, the Court finds the requested number of hours is reasonable.

4 **D. Reply Brief**

5 Finally, Plaintiff seeks an additional \$923.63 (4.5 hours) for time spent preparing the reply  
6 brief. “Under EAJA, a prevailing party is entitled to fees incurred in protecting the EAJA fee  
7 award in subsequent litigation by the government over the amount of the EAJA fee award.”  
8 *Potter v. Colvin*, 2015 WL 7429376, at \*4 (N.D. Cal. Nov. 23, 2015) (citing *Comm'r, I.N.S. v.*  
9 *Jean*, 496 U.S. 154, 161 (1990); *Love v. Reilly*, 924 F.2d 1492, 1497 (9th Cir. 1991)). The Court  
10 finds Plaintiff’s request for \$923.63 for preparing the reply brief is reasonable. *See, e.g., Lauser*,  
11 2015 WL 1884330, at \*5 (awarding \$1,110.21 for fees for preparing of the reply brief).

12 **E. Filing Fee**

13 Plaintiff also requests, and the Commissioner does not oppose, reimbursement of the \$400  
14 filing fee. Plaintiff is entitled to reimbursement of this fee. *See Taroni v. Berryhill*, 2018 WL  
15 646499, at \*3 (N.D. Cal. Jan. 30, 2018); *Long*, 2015 WL 3902160, at \*3.

16 **F. The Fee Award Should be Paid to Counsel**

17 In *Astrue v. Ratliff*, 560 U.S. 586 (2010), the Supreme Court considered this provision of  
18 the EAJA and whether it makes a fee payable to the prevailing party or the attorney. The Supreme  
19 Court noted the absence of language in the EAJA explicitly directing fees to attorneys and  
20 compared EAJA with a provision in the Social Security Act making fee awards payable “to such  
21 attorney.” *Id.* at 595 (citing 42 U.S.C. § 406(b)(1)(A)). In so doing, the Court concluded that  
22 “given the stark contrast between the SSA’s express authorization of direct payments to attorneys”  
23 and the absence of such language in EAJA, it would not interpret EAJA to “contain a direct fee  
24 requirement absent clear textual evidence supporting such an interpretation.” *Id.* Nevertheless,  
25 courts in this district have concluded that *Ratliff* does not prevent payment of a fee award directly  
26 to the attorney if there has been a valid assignment and the plaintiff does not owe a debt to the  
27 government. *See Potter v. Colvin*, 2015 WL 7429376, at \*4 (N.D. Cal. Nov. 23, 2015) (collecting  
28 cases). As Plaintiff assigned her EAJA fees to Ms. Siegfried (*see* ECF No. 21-2), the award shall

1 be paid directly to Ms. Siegfried, subject to any debt offset.

2                   **V. CONCLUSION**

3                   For the reasons stated above, the Court **GRANTS** Plaintiff's motion for an award of  
4 \$10,980.88 in attorney's fees and \$400 in costs.

5                   **IT IS SO ORDERED.**

6  
7 Dated: June 30, 2020

8                     
9                   THOMAS S. HIXSON  
10                  United States Magistrate Judge